

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JAMES ERIC LOFTEN	§	
Petitioner,	§	
	§	
V.	§	C.A. NO. C-05-383
	§	
UNITED STATES GOVERNMENT, et. al,	§	
Respondent.	§	

**ORDER DENYING JUDICIAL NOTICE**

This is a petition for writ of habeas corpus filed by a prisoner. Pending is petitioner's motion requesting that the Court take judicial notice. (D.E. 16).

It appears that petitioner seeks to have the Court take judicial notice of his allegation that his pen was stolen by prison officials.<sup>1</sup> He further complains of being unable to respond to court orders in a timely manner. (D.E. 16); see also (D.E. 15).

Rule 201 establishes that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The facts that petitioner proposes are not such that this Court may take judicial notice of them. See generally Scanlan v. Tex. A&M Univ., 343 F.3d 533, 536-37 (5th Cir. 2003).

Rule 201 further establishes that "[a] party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence


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<sup>1</sup> This allegation is part of the underlying petition in this case. The undersigned has recommended that this habeas corpus petition be dismissed and that petitioner refile his action as a civil rights action pursuant to 42 U.S.C. § 1983. (D.E. 14).

of prior notification, the request may be made after judicial notice has been taken.” Fed. R. Evid. 201(e); see also Chen v. Metropolitan Ins. & Annuity Co., 907 F.2d 566, 569-70 (5th Cir. 1990). A order for service of process was never entered. Thus, respondent has had no opportunity to be heard regarding petitioner’s request for judicial notice.

Petitioner’s motion requesting judicial notice, (D.E. 16), is DENIED.

ORDERED this 13th day of October 2005.



BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE